

## **OPTIMISE LIMITED – TERMS OF ENGAGEMENT**

### **1. Definitions**

- 1.1. "Business" shall mean **Optimise Limited** its successors and assigns or any person acting on behalf of and with the authority of Optimise Limited.
- 1.2. "Conditions" means the Terms of Engagement outlined herein.
- 1.3. "Client" shall mean the person, authorised agent or legal entity described on the invoice or quote.
- 1.4. "Fee" shall mean the cost of the Services specified by the Business subject to clause 4 of this contract.
- 1.5. "Services" shall mean all services supplied by the Business to the Client and includes any advice or recommendations provided. Such services include the collection of information, consultation with members of staff or individuals, training and/or the production of reports.
- 1.6. "Variation" means any change to the Services to be provided by the Business, which is requested by either the Client or Business and which is mutually agreed by both parties in writing or electronically via email.

### **2. General Conditions**

- 2.1. All provision of Services are subject to these Conditions.
- 2.2. If any provision of these Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 2.3. These Conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the exclusive jurisdiction of the courts of New Zealand.
- 2.4. The Business' liability arising from the performance of its Services will in no circumstance exceed the invoice value of the Services.
- 2.5. Under no circumstances shall the Business or its agents be liable to the Client or any third party for any incidental, special, indirect, consequential or punitive damages, including loss or profits, loss of revenues, loss of business, loss of operations, injury to reputation or loss of goodwill, suffered by the Client or third party, resulting out of a breach by the Business of these Conditions or otherwise.
- 2.6. Neither party shall be liable for any default or loss due to any act of God, War, Terrorism, Strike, Lock Out, Industrial Action, Fire, Flood Drought, Storm or any other event beyond the reasonable control of either party.
- 2.7. The Business may sub-contract all or any part of its rights and obligations without the Client's consent.
- 2.8. The Business reserves the right to review these Conditions at any time. If, following any such review, there is to be any change to these Conditions, then that change will take effect from the date on which the Business notifies the Client of such change in writing.
- 2.9. No failure of the Business to insist upon strict performance of these Conditions, or delay in exercising any of its rights or remedies, shall constitute a waiver or variation of these Conditions or a waiver of any such right or remedy.

### **3. Acceptance**

- 3.1. Any verbal and/or written acceptance of quotes received by the Business from the Client for the provision of Services shall constitute acceptance of these Conditions by the Client.
- 3.2. The Client's receipt of any Services shall also constitute acceptance of these Conditions.
- 3.3. Where there is more than one person or entity named as the Client, both or all persons or entities named shall be jointly and severally liable for all payments of the Fee.
- 3.4. Upon acceptance of these Conditions by the Client the Conditions are irrevocable and can only be amended with the written consent of the Business.
- 3.5. The Business will not be deemed to have accepted a Client's request for Services until the Business confirms its acceptance in writing.
- 3.6. The Business will not accept any changes or variations to the Services to be provided once the quote has been accepted in writing by the client unless mutually agreed upon in writing.
- 3.7. The Client acknowledges that the Business is not responsible for any delays that are beyond the Business' control.

### **4. Fee and Payment Terms**

- 4.1. At the Business' sole discretion the Fee shall be either:
  - (a) as indicated on invoices provided by the Business to the Client in respect of Services provided; or
  - (b) the Business' quoted Fee (subject to clause 4.2).
- 4.2. The Business reserves the right to revoke any fixed Fee and provide a replacement Fee in the event of a variation to the Services required by the Client, if there is additional work that falls outside the agreed scope, or in the event any unforeseen cost must be expended by the Business for the benefit of the Client.
- 4.3. The Business will provide its invoices to the Client on completion of the work or monthly if the term of engagement is more than one (1) month.
- 4.4. Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms.
- 4.5. If no time is stated then payment shall be due on the 20<sup>th</sup> of the month following the date of the invoice.
- 4.6. Payment is to be made by direct credit unless otherwise agreed by the Business in writing.
- 4.7. The Client shall pay each invoice in full. The Client shall have no right to set off against an invoice, or to deduct from an invoice, any claims that the Client may have against the Business.
- 4.8. GST shall be added to the Fee except where GST is expressly included in the Fee.

- 4.9. The Business reserves its right to charge travel costs outside of Motueka. Any travel cost will be included and itemised in the Business' invoice and will be charged at:
  - (a) 50% of the Business' hourly rate plus GST for actual time travelling; and
  - (b) mileage charged at the current Government rate.
- 4.10. The Business reserves its right to charge disbursements for any out of pocket expenses incurred by the Business, on the Client's behalf, including but not limited to courier costs, postage, printing, airfares and/or accommodation.

### **5. Default and consequences of default**

- 5.1. Interest on overdue invoices shall accrue daily from the date payment became due until the date payment is made at a rate of 5% above the Business' current bank overdraft rate per month as at the close of business on the date payment became due.
- 5.2. In addition to the provisions of clause 5.1, If the Client defaults in payment of any invoice the Business reserves the right to:
  - (a) Suspend or terminate the provision of Services to the Client and any of its other obligations under these Conditions; and
  - (b) Use personal information as that term is used in the Privacy Act 1993 but only to the extent necessary to take action to recover payment of the invoice or account; and
  - (c) Charge the Client for all costs and fees by a collection agency or lawyer's fees which are incurred in taking action to recover outstanding costs; and
  - (d) Charge an administration fee of \$500 plus GST if time and effort is involved in collection from the Client.

### **6. Completion of Services**

- 6.1. Services are deemed to be completed when the Business has provided its services as specifically outlined and/or quoted for at the beginning of the engagement.

### **7. Client's Disclaimer**

- 7.1. The Client acknowledges that the Services are bought relying solely upon the Client's skill and judgement and hereby disclaims any right to sue for damages or claim restitution.

### **8. Client Satisfaction**

- 8.1. If the Client notifies the Business of any concerns regarding the Services in writing within 7 days of the date or receipt of the Business' reporting, the Business will in good faith attempt to rectify the concern.

### **9. Intellectual Property**

- 9.1. The provision of Services does not include the sale of the relevant Intellectual Property.
- 9.2. The Business retains ownership of all Intellectual Property, including but not limited to, all reporting provided to the Client.
- 9.3. The Client shall not copy any Intellectual Property or use such Intellectual Property in a manner that is prejudicial to the commercial interests of the Business.
- 9.4. The Client will not reproduce the Business' intellectual property or provide it to any third party without the Business' written consent.

### **10. Privacy Act 1993**

- 10.1. The Client authorises the Business to:
  - (a) collect, retain and use any information about the Client, for the purpose of assessing the Client's credit worthiness, to enforce rights under the Conditions, and for marketing of services to the Client; and
  - (b) to disclose information about the Client, whether collected by the Business from the Client directly or obtained by the Client from any other source, to any credit provider or any credit reporting agency for the purposes of providing a credit check, debt collection or notifying default by the Client.
- 10.2. Where the Client is an individual the authorities under (clause 10.1) are authorities or consents for the purposes of the Privacy Act 1993.
- 10.3. The Client shall have the right to request the Business for a copy of the information about the Client retained by the Business and the right to request the Business to correct any incorrect information about the Client held by the Business.
- 10.4. The Business will in no circumstance be liable if any reporting or private information regarding any individual who is an agent of, or employee of the Client, which is collected and/or disclosed by the Business during the provision of Services, is disclosed by the Client to any third party without prior written approval of the individual concerned.

### **11. Cancellation**

- 11.1. The Business may cancel these terms of engagement or cancel provision of the Services at any time before the Services are provided in full by giving written notice to the Client. On giving such notice the Business shall repay to the Client any sums paid in respect of the Fee. The Business shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 11.2. In the event that the Client provides written notice to the Business that it cancels provision of the Services the Client shall be liable for any loss or costs incurred by the Business (including, but not limited to, any time already spent or loss of profits) up to the time of cancellation. The Client will not be entitled to receive any refund of any fee paid to the Business, unless agreed to by the Business in writing.

### **12. Dispute Resolution**

- 12.1. The parties agree that in the event of any dispute arising from the provision of Services, the parties will in good faith attempt to negotiate resolution of the dispute before proceeding to litigation.